

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ANTHONY MINEO

Plaintiff,

-against-

TOWN OF HEMPSTEAD, JOHN ROTTKAMP,
individually and in his capacity as Commissioner of
The Town of Hempstead Building Department,
JOHN NOVELLO, individually and in his capacity
as the Deputy Commissioner of the Town of
Hempstead Building Department, RAYMOND
SCHWARZ, individually and in his capacity as
Supervisor of Inspection Services for the Town of
Hempstead, ROY GUNTHER, individually and in
his capacity as Chief Code Enforcement Officer for
the Town of Hempstead,

Defendants.

AZRACK, United States District Judge:

On July 13, 2022, Plaintiff Anthony Mineo (“Plaintiff”) commenced this action against Defendants (i) Town of Hempstead; (ii) John Rottkamp, individually and in his capacity as Commissioner of the Town’s Building Department; (iii) John Novello, individually and in his capacity as the Deputy Commissioner of the Town’s Building Department; (iv) Raymond Schwarz, individually and in his capacity as Supervisor of Inspection Services for the Town; and (v) Roy Gunther, individually and in his capacity as Chief Code Enforcement Officer for the Town (collectively, “Defendants”). Plaintiff alleges violations of the Family and Medical Leave Act (“FMLA”), 42 U.S.C. § 1983, and the Fair Labor Standards Act (“FLSA”) for (i) failure to pay for overtime; (ii) for retaliation for reporting workplace violence and safety concerns as well as for taking FMLA intermittent leave; (iii) and for prohibited dissemination of his medical information.

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ORDER

22-cv-04092 (JMA) (JMW)

**FILED
CLERK**

12:17 pm, Mar 12, 2024

**U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
LONG ISLAND OFFICE**

(ECF No. 1.)

Before the Court today is a Report and Recommendation (“R&R”) from Magistrate Judge James M. Wicks (ECF No. 28), which recommends that the Court (i) deny Plaintiff’s Cross Motion to Amend his Complaint—which includes eliminating his FLSA claim, supplementing facts surrounding his § 1983 claim, and adding a continuing violation and false arrest claim pursuant to § 1983 (ECF No. 21); (ii) grant Defendants’ Motion to Dismiss the operative Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) (ECF No. 22); and deny Defendants’ request for attorneys’ fees under 42 U.S.C. § 1988. No objections to the R&R have been filed; the time for doing so has expired. For the reasons stated below, the R&R is adopted in its entirety.

A district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1); see also FED. R. CIV. P. 72(b)(3). “Where parties receive clear notice of the consequences, failure to timely object to a magistrate’s report and recommendation operates as a waiver of further judicial review of the magistrate’s decision.” Smith v. Campbell, 782 F.3d 93, 102 (2d Cir. 2015) (quoting Mario v. P & C Food Mkts., Inc., 313 F.3d 758, 766 (2d Cir. 2002)); see also Phillips v. Long Island R.R. Co., 832 F. App’x 99, 100 (2d Cir. 2021) (same). In the absence of any objections, “the district court need only satisfy itself that there is no clear error on the face of the record.” Estate of Ellington ex rel. Ellington v. Harbrew Imports Ltd., 812 F. Supp. 2d 186, 189 (E.D.N.Y. 2011) (internal citations omitted).

The Court has reviewed the record and the unopposed R&R for clear error and, finding none, hereby adopts Judge Wicks’s well-reasoned and thirty-eight paged R&R in its entirety as the opinion of the Court. Accordingly, Plaintiffs’ Cross Motion to Amend his Complaint is DENIED, Defendants’ Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) is

GRANTED, and Defendants' request for attorneys' fees under 42 U.S.C. § 1988 is DENIED. The Clerk of Court is respectfully directed to enter judgment and close this case.

SO ORDERED.

Dated: March 12, 2024
Central Islip, New York

/s/ JMA
JOAN M. AZRACK
UNITED STATES DISTRICT JUDGE